# Supreme Court of the United States.

OCTOBER TERM, A. D. 1902.

No. 215.

SINGER MANUFACTURING COMPANY,
*Petitioner,*

*vs.*

HERMAN CRAMER,
*Respondent.*

## PETITIONER'S REPLY TO ADDENDA BRIEF.

We have just received the Addenda Brief from the counsel of the respondent Cramer, and as we understand the indulgence of the court, we are permitted to reply thereto.

### I.

Following the order of presentation of supposed points of respondent's Addenda Brief, we respectfully submit that such presentation wholly weakens, and in no manner strengthens, the filed brief of the respondent.

(1.) The first claim of the Diehl patent has for its first and principal element the "vertical double brace joining the two legs of a sewing machine, provided with holes," etc. It is the usual vertical double brace that constitutes this element, with certain holes, and not the old common cross-bar. When Diehl cast as a unit struc-

ture the "old usual vertical brace" and the "old common cross-bar" he of course produced a structure which was in itself as an entirety a *brace;* and his patent in the fifth claim distinctly states and provides and claims that he mounts his treadle in that cross-bar, and this cross-bar forms the base of the concrete brace. Respondent's counsel seems to derive much satisfaction, on page 2 of his Addenda Brief, from the fact that the Singer catalogue states that the treadle is "entirely supported within the brace." Of course it is. But in the old cross-bar that now constitutes a part of the new brace, and it is nowhere intimated in the Diehl patent that the treadle can be hung in the vertical double cross-brace. Diehl's band-wheel also is "entirely supported within the brace," but can it be for a moment contended that it has any support whatever in the old common cross-bar, cast integral with the vertical double brace?

(2.) We have no desire to fill this brief up with drawings and pictures attempting to show by graduation of drawings, that two things that are not the same thing, can be made by gradual steps in illustrative drawings to stand for the same thing. We would call the attention of this court, however, in this connection, to the second Singer machine, having its treadle hung upon point center screws passing through the legs of the stand, and to the fact of the usual double vertical cross-brace being bolted solidly to the legs of the machine a short distance from the point of hanging the treadle therein on the point center screws. In this stand the old common cross-bar is omitted, and the only brace in the machine is the usual vertical double brace. Now it must have occurred a thousand times, even to the most stupid mechanic or handler of these machines, that the same point center screws upon which the treadle was hung in the second

old Singer machine could pass through the lower ends of the vertical double cross-brace, and thus save one set of bolts or screws, and one set of holes in the legs of the stand, utilizing one point center screw for both purposes; and if there had been the slightest defect in any way, as claimed by Cramer and his counsel, in the hanging of the treadle, this would have been done. But there was no such defect, and the lower end of the brace was not moved up upon the point center screws and there held in the second Singer machine because the brace itself, as a brace clogging and filling up the stand below the head of the machine, is a nuisance to the knees and the dress of the woman who operates it, and in the second Singer machine, for this reason, was moved back from that point, where it was in the first Singer machine, as shown by the stand in evidence. We say how easy it would be to stop here and draw pictures of the second Singer machine, at its lower end moved up to and held in place by the point center screws that pass through the legs and hold the treadle in operative position, and thus illustrate pictorially the fact that every semblance of contention for this idealized first claim of Cramer could be found in this slight manifest change, if desired, and if, indeed, there was the slightest necessity.

(3.) Respondent's counsel seems to take much umbrage in his Addenda Brief at the fact that petitioner has made it certain upon the presentation of this case that at the date of the filing of the petition for certiorari, although the Cramer patent had expired nearly two years before, no sewing machine manufacturer, great or small, had ever hung its treadle in any manner upon or in connection with the vertical double cross-brace, nor had changed the old style of hanging the treadle in or upon

the cross-bar, or in the legs of the machine. This fact was sworn to, in the petition as filed, by the president of the Singer Manufacturing Company, as appears in the petition (p. 18), and would seem to be a relevant fact that ought to be known to the court. The fact was not denied or the statement criticised in the opposing brief of respondent's counsel for the granting of the petition, but practically admitted to be justified, and it would seem to be a little late now in an Addenda Brief to challenge the presence of such fact in this court.

## II.
## Damages.

(1.) The discussion of respondent's counsel in his Addenda Brief to the question of damages is so curious as to be fantastic. Respondent's counsel seems to consider that wild conclusions and reckless statements that have in them no element of fact, and indeed are entirely contradictory to the facts and evidence in the case, shall be taken and treated as if such conclusions were evidence. We have quoted in our main brief all of the facts relating to the manufacture and the attempted sale of twenty-five to forty braces by Cramer under his patent, for a period of five years beginning with the year 1881. There is not a word of proof in this record in substantiation of the statements of respondent's counsel that the Singer Company sold their machines for $5 less than Cramer, and such a statement, or suggestion even, is grotesquely absurd in the light of Cramer's testimony as to the application of his patented brace in the revamping and sale of second-hand machines. There is not a word of testimony in this case that the Singer Company sold its machines with the Diehl stand for a cent less

than they sold the old stand and treadle. There is not a line of testimony in this record that Cramer ever lost the sale of a machine with his patented treadle by reason of the Diehl stand, and if such an instance had ever happened this record would have contained a detailed account of it upon Cramer's part, and notoriously and admittedly that which sells a sewing machine is its operative mechanism called its head. There is not a word of testimony in this record from any manufacturer, user, or dealer, that he ever bought, sold, or used a stand with the Cramer brace in it in any manner, much less by reason of the presence of such brace; and the only positive testimony as to the use of any stand with the Cramer brace at any time was by the young daughter of Cramer.

(2.) The reckless statement upon the argument by respondent's counsel, that the record showed, and it was so admitted, that Cramer did not use the second claim of his patent in the twenty-five or forty braces made by him between the years 1881 and 1885 is without any justification by the record, and is in direct contradiction and conflict with all the testimony and statements, even as to Cramer himself, upon this point. Cramer testified over and over again that the twenty-five or forty braces were cast in accordance with the brace of his patent, and of course contained the devices of the second, as well as the first, claim. He at all times speaks of putting his patented brace in the second-hand machines. He nowhere says that he used the devices of his first claim alone, or that he ever omitted the devices of his second claim. In fact, he carefully points out how he made the block and cushion, and what he made such block and cushion out of, that he allied with his brace to hold his treadle in place and produce the combination of his second claim; and says that the cushion and block only cost

about a cent to make; that he cut the block out of a broom stick, and made it in that way, etc. (Record, p. 105.) More than all this, it is perfectly evident from Cramer's patent, to make the treadle bearings stay in place in operative condition, some devices, either the devices of the second claim of the patent, or substantially such devices, must be used. Cramer, in fact, so testifies, and even fifteen years afterwards attempts to attribute their sole function in the twenty-five or forty braces sold by him, "to prevent the noise that would be made were they not there." (Record, p. 112.)

(3.) Respondent's counsel also seems to now assert that the allegation of the petitioner, for the writ of certiorari, as to the large number of suits since brought by respondent against the Singer Company in the various circuits and districts of the United States, and the fact that such suits are founded upon the jury finding in this case, and aggregate many millions of dollars in asserted damages, as set forth in the petition for writ (pp. 8-9), is without any opportunity for consideration at the hands of this court.

These facts and conditions were distinctly stated in the petition, and as one of the grounds for its presence in this court, namely, to determine whether or not a patentee can limit his claim for damages in a jury action to the particular district in which such suit is brought, and then divide and subdivide his claims against an alleged infringing manufacturer into separate suits in every district of the United States, and confine the recoveries for the alleged infringing acts in such separate districts by such separate suits by jury trials. In the brief filed by respondent's counsel opposing the application and grant of this petition respondent's counsel admitted these

acts, and justified under them, respondent's counsel stating in said brief (p. 7) as follows:

> "As to the second ground, it is charged that Cramer is guilty of improper methods, because he has filed separate suits in separate districts; but in this course he is merely doing what the law allows him to do, namely, to sue in the district where the infringement actually occurs, and the defendant has a managing agent. . . . If there is anything reprehensible in this course, we fail to see it. Cramer is merely pursuing the remedies allowed him by the statute, and is proceeding in the method allowed by the statute."

It is the contention of the petitioner's counsel that these statements do not represent the law of the case, and such suits should not be permitted.

(4.) Respondent's counsel seems to consider that the finding of the jury as to damages should stand, even if the whole fabric or foundation is guess work, because of the fact that respondent Cramer wrote the Singer Company a letter as to his patent about the date of its grant, and wanted to sell it to the company. This letter was read in full at the hearing before your Honors, with much emphasis and attempted impressiveness. How entirely futile and unimportant this letter is when we find from Cramer's testimony, and the testimony of his daughter, that this same letter was written at about the same time to every sewing-machine manufacturer in the United States. This fact and the result is shown in the following two questions and answers from Cramer's testimony:

> "Q. With how many of these different manufacturers of sewing machines did you try to make a deal for your patent?
>
> "A. *I think I wrote to all of them. So far as*

*I remember now it was all of them.*" (Record, p. 86.)

"Q. Did you succeed in getting an offer for any kind of a deal for your patent, or for your invention, from any of these companies?

"A. *No, sir. I did not.*" (Record, p. 87.)

His daughter testified to the same effect. (Record, p. 155.)

Respondent's counsel stated to your Honors upon argument that 7,000 patents have been issued upon sewing machines. The probabilities are that more than half of these 7,000 supposed inventors did exactly what Cramer did, and wrote every one of the leading sewing-machine manufacturers of the country with precisely the same tenor and purpose exhibited in the Cramer letter.

## III.

## The Diehl patent as evidence and as bearing upon the construction of the Cramer patent and infringement.

Substantial space is given in respondent's Addenda Brief in an endeavor to show that the trial court and the Court of Appeals committed no error in disregarding the requested instructions of the Singer Company as to the force and effect of the Diehl patent bearing upon the question of infringement, and the ignoring of that patent for such purpose in the instructions as actually given by the trial court. We have cited the law in our main brief in support of our contention and find nothing in the criticisms or discussion of these decisions in the Addenda Brief to limit the full scope of our contention as to this matter.

We respectfully insist further, in addition to the authorities cited, that the presence of this Diehl patent in

this record, not only as an explanation or as a justification of the brace stand of the Singer Company, but that such patent is practically decisive in sweeping away every contention or assertion of infringement of the Cramer patent by the Diehl structure. It is not contended by counsel for the respondent that the Diehl stand can be swept under the Cramer patent as an infringement, or that it be permitted by a jury so to do, unless such patent be construed as a "pioneer." The decision of this court in the case of *Westinghouse* v. *Boyden Power Brake Co.*, 170 U. S., 561, contains the most recent, clear and conclusive statement and argument of this court upon the question of "pioneer" patents, and is peculiarly applicable to the facts in this case, this court saying:

> "To what liberality of construction these claims are entitled depends to a certain extent upon the character of the invention, and whether it is what is termed in ordinary parlance a 'pioneer.' This word, although used somewhat loosely, is commonly understood to denote a patent covering a function never before performed, a wholly novel device, or one of such novelty and importance as to mark a distinct step in the progress of the art, as distinguished from a mere improvement or perfection of what had gone before. Most conspicuous examples of such patents are: The one to Howe* of the sewing machine; to Morse of the electrical telegraph; and to Bell of the telephone. The record in this case would indicate that the same honorable appellation might be safely bestowed upon the original air-brake of Westinghouse, and perhaps also upon his automatic brake. In view of the fact that the invention in this case was never put into successful operation, and was to a limited extent anticipated by the Boyden patent of 1883, it is perhaps an unwarrantable extension of the term to

* *Note* by the authors—the first of the 7,000.

> speak of it as a 'pioneer,' although the principle involved subsequently and through improvements upon this invention became one of great value to the public."

The question of the construction of the patent being for your Honors, and it not appearing on the face of the Cramer patent, or from the evidence, that Cramer is or can be a "pioneer," as fixed by the above decision; and there being nothing on the face of the Cramer patent that requires evidence, explicit or otherwise, to explain terms of law, or to apply the description of the subject-matter, and the court being able by a mere comparison to determine what are the inventions described in the Cramer patent, there is in this case alone, under the above decision, we confidently contend, a question of pure construction, and not of evidence, and that therefore there was no auxiliary matter of fact to be passed upon by the jury in the light of this single controlling question in this case; and that when this Cramer patent is read, in view of the admitted state of the art of record both as to patents and old mechanisms, and in view of the uncontradicted evidence in this case as distinguished from speculations, conclusions, and unsupported assertions, this verdict should not stand.

## Conclusion.

Finally, your Honors, we earnestly submit that this is not a case of a "pioneer" inventor who has blazed a trail and pathway through a trackless forest that has been widened to a great highway and travelled by subsequent followers, but it is the case of one of a multitudinous horde of supposed inventors leaving the beaten road and

attempting to grope his way blindly through a forest and mark out a trail that in fact is simply a stumbling pathway that leads to, and ends in, only the bog and mire of oblivion.

Respectfully submitted,

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*For Petitioner.*